

# Legal Requirements for Humanitarian Assistance Operations

Linda S. Keefer

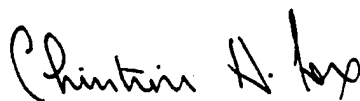
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# Legal Requirements of Humanitarian Assistance Operations

by Linda S. Keefer

This briefing presents the results of a study conducted by the Center for Naval Analyses (CNA) for the Marine Corps Combat Development Command (MCCDC) and the I Marine Expeditionary Force (I MEF). Our goal was to determine how the Marine Corps can improve its ability to conduct humanitarian assistance operations (HAOs) through changes in doctrine, organization, training, and equipment. This particular briefing presents an analysis of the legal requirements of HAOs. Although HAOs occur within the United States as well as abroad, here we focus only on those legal requirements specific to foreign HAOs.

Other areas examined in the larger HAO study include planning, logistics and engineering, training and education, PSYOP and civil affairs, command relationships, and domestic operations. A list of CNA documents related to HAOs is provided on the inside back cover.

## Approach

CNA

- ◆ Identify requirements by examining past operations and exercises, and by conducting seminar-style games.
- ◆ Determine how requirements are currently being met.
- ◆ Determine alternative ways of meeting the requirements.

HAO mission requirements are those actions the Marines need to take to conduct a mission, such as planning, coordinating, and conducting operations. When we say “legal requirements,” we mean those mission requirements related to laws or the military legal staff.

To identify mission and legal requirements, we examined a variety of past HAOs, both foreign and domestic. Missions ranged from simple disaster relief, as in Operation Sea Angel (Bangladesh, 1991), to securing the delivery of relief supplies in a failed state, as in Operation Restore Hope (Somalia, 1993). Our sources of information included the Joint Universal Lessons-Learned database (JULLS), the Marine Corps Universal Lessons-Learned database (MCLLS), mission after-action reports, articles, and interviews with Staff Judge Advocate (SJA) officers.

Besides studying past missions, we looked at humanitarian exercises, including Tempo Brave '94 and Emerald Express '95. Conducting our own series of seminar games at CNA in 1994 helped to highlight additional HAO requirements.

After we determined HAO legal requirements, we looked at how those requirements are currently being met by the Marine Corps. Finally, we looked for possible alternative ways to meet these requirements.

## Bottom line

CNA

- ◆ Most legal requirements are similar to those in other military operations.
- ◆ Requirements unique to HAOs occur most often in operations where there is little or no functioning host government.

Most of the basic legal requirements for HAOs (especially those related to equipment, supplies, and basic services) are similar to those of other military operations. However, because of the unique legal character of some HAOs, some requirements, although common to both HAOs and combat missions, have a different emphasis in HAOs. Also, a few requirements are unique to HAOs. Most of these requirements occur in missions that, although not considered armed conflicts by international law, require the military to take on many of the functions of an occupying power. In such missions, the military may be required to perform tasks such as handling local criminals or, in the case of Operation Guantanamo (GTMO) or Operation Provide Comfort, running refugee camps.

## Briefing format

CNA

- ◆ This briefing has four parts:
  - Common requirements
  - Common requirements, but with a different emphasis for HAOs
  - Requirements unique to HAOs
  - Recommendations.
- ◆ Appendices.

We organized this briefing into four main parts. First, we discuss some important legal requirements that are common to both HAOs and combat missions. Next, we present requirements that are common to most military operations, but have a different emphasis for HAOs. We then cover requirements that are unique to HAOs. We conclude the briefing with recommendations on meeting requirements. Appendix A presents our complete list of HAO legal requirements, and appendix B presents a legal framework for the commander's handbook that was developed during Exercise Emerald Express '95 to be used during coalition operations.

## Common legal requirements

CNA

- ◆ Basic equipment and supplies
- ◆ Basic references
- ◆ Legal assistance
- ◆ General orders and commander's policy guidance

All military operations have a certain set of legal requirements that will not change if the operation is oriented toward humanitarian assistance. Such requirements include the need for basic equipment and supplies (i.e., word-processing and reproduction capabilities), as well as reference materials, such as the operations plan (OPLAN); rules of engagement (ROE); general orders; and basic operational and international law publications.

Providing legal assistance can be required in almost any operation. This assistance can include preparing wills and powers of attorney, or helping the G-3/J-3 disseminate and explain general orders and the commander's policy guidance.



## Common legal requirements

CNA

- ◆ C<sup>2</sup> requirements
  - Court martial authority
  - Communications
  - Clearances
- ◆ Logistics and medical support to non-U.S. personnel
- ◆ Claims

Many common legal requirements relate to basic command and control. For example, working out court martial authority for rear and forward elements, maintaining communications among attorneys, and ensuring that clearances are obtained for overflight of foreign territory.

Because operations are often multinational, providing logistics and medical support to non-U.S. personnel is also a common issue. It is important to have cross-service agreements in place before coalition forces arrive.

Claims issues will arise in most operations. The same basic requirement here is to coordinate with the single-service claims authority and to ensure that claims information is properly collected.

## Common requirements, but different emphasis for HAOs

CNA

- ◆ Knowledge of applicable international law and terminology
  - Legal justification
  - Customary international law and treaties
  - Terminology
- ◆ Knowledge of host-nation laws

Some requirements that are common to most operations concerning the efforts of the SJA have a different emphasis for HAOs. For example, the most important legal issue during any international operation is its legal justification. This is equally true for “humanitarian intervention” operations—a concept that is still evolving in international law. Because the legal justification for HAOs will be different from other military missions (several previous operations were based on Chapter VII of the UN Charter), the SJA should be familiar with a different set of laws so that he can provide guidance to the commander.

Besides understanding a mission’s legal justification, the SJA should understand and provide guidance on customary international law and international treaties. This can be especially difficult during HAOs in which the receiving government is not intact, or is only partially intact. During Provide Comfort, Restore Hope, and Uphold/Restore Democracy, the military relied on a combination of the UN Charter, customary international law, and international treaties, such as the Convention on International Civil Aviation.

The SJA must encourage the use of correct terminology during operations. For example, use of the term “occupying force” can suggest application of the Law of Occupation, which implies specific responsibilities for the military.

## Common requirements, but different emphasis for HAOs (continued)

CNA

- ◆ Knowledge of applicable international law and terminology
  - Legal justification
  - Customary international law and treaties
  - Terminology
- ◆ Knowledge of host-nation laws

Because HAOs are not considered “armed conflicts,” the law of armed conflict will not be an appropriate legal guide. It is therefore particularly important in HAOs for the SJA to understand and provide guidance to the operational commander on applicable host-nation laws. Without knowledge of host-nation laws, it is difficult for a military force to make contracting arrangements and to perform law-enforcement activities. (During Restore/Uphold Democracy, U.S. troops arrested a Haitian who offered them marijuana, only to question later whether marijuana was illegal in Haiti—it was.)

Understanding host-nation laws requires that the military obtain copies of relevant statutes and develop points of contact with experts on these laws. In cases where the receiving government or host government is not intact, it can be difficult to obtain such information. During Restore Hope, the SJA used copies of the Somali code and points of contact on Somali law obtained through the Library of Congress. Other potential sources of information include country desks, intelligence agencies, and commands responsible for the area of responsibility (AOR). Furthermore, in the case of a failed government, the military should understand the circumstances of that government’s failure and what part previous laws might have played in its downfall.

## Common requirements, but different emphasis for HAOs (continued)

CNA

- ◆ Rules of engagement
- ◆ Personnel
- ◆ Agreements
- ◆ Contracting
- ◆ Funding

As for rules of engagement (ROE), HAOs require most of the same considerations as other operations. The principal difference between developing ROE for HAOs compared to ROE for traditional military missions is the diminished need for deadly force in HAO mission accomplishment.

In the past, peacetime ROE were used for HAOs. More recently, these rules have been incorporated into a new set of ROE called standing rules of engagement (SROE). The new ROE contain an unclassified section, which can be shared with coalition forces. This section provides definitions and explanations of important concepts (e.g., hostile intent). The SJA should be aware of these new rules of engagement and provide guidance to the commander.

Decisions concerning the type of force to use against low-level threats, such as crowds, need to be made in advance and disseminated. Here again, the SJA should be prepared to provide assistance. In Somalia, shouting warnings and showing force were ineffective against crowds, but deadly force was inappropriate. Cayenne-pepper spray was eventually approved for use and was effective. Briefings on such nonlethal alternatives should emphasize that they are not a substitute for the appropriate use of deadly force. Furthermore, request and authorization procedures should be set up so that a subordinate command can request the use of riot-control agents (RCAs) for a specified time in a specified area.

## Common requirements, but different emphasis for HAOs (continued)

CNA

- ◆ Rules of engagement
- ◆ Personnel
- ◆ Agreements
- ◆ Contracting
- ◆ Funding

Other considerations for a mission's ROE might include whether to declare a particular force or group hostile. (For example, if someone is standing at the end of an air strip with a gun, are they automatically considered hostile?)

Personnel requirements vary according to the type and size of the operation. Both traditional missions and HAOs can require attorneys experienced in administrative and operational law, contracting, and international law. During HAOs, attorneys with expertise in these areas are especially important because of the increased need to contract with local businesses, and the need to provide guidance on unique international legal issues (such as what to do with civilian detainees). It is also important to have an attorney with expertise in U.S. fiscal law because of the many fiscal laws and regulations governing HAO activities.

The SJA must coordinate with nongovernmental organizations (NGOs) to ensure consistent and timely guidance on legal issues, particularly those related to logistical support. During foreign HAOs, the SJA will often coordinate with NGOs through the Humanitarian Operations Center (HOC) and the International Committee of the Red Cross (ICRC).

## Common requirements, but different emphasis for HAOs (continued)

CNA

- ◆ Rules of engagement
- ◆ Personnel
- ◆ Agreements
- ◆ Contracting
- ◆ Funding

Most agreements necessary during HAOs are similar to those needed during other military operations. But because HAOs are normally conducted in peacetime, it is also important to have Status of Forces Agreements (SOFAs) with the host country. (This requires that the receiving government be intact.) A good understanding of existing SOFAs, such as the NATO SOFA, is therefore required.

Memorandums of understanding (MOEs) and cross-service agreements are important when coordinating with other government agencies or foreign forces. Having these agreements in place before providing logistical and medical support to foreign forces helps ensure adequate reimbursement to the military for these services.

Although contracting occurs frequently in military operations, it can be more difficult when the receiving country has little or no infrastructure, and only limited sources of supply, as in Somalia; or when the civil law governing such transactions is difficult to identify, as in Haiti.

## Common requirements, but different emphasis for HAOs (continued)

CNA

- ◆ Rules of engagement
- ◆ Personnel
- ◆ Agreements
- ◆ Contracting
- ◆ Funding

Finally, although funding is an issue during any operation, it can be particularly important during HAOs because of the many domestic laws and regulations governing military activities. Most of the legal constraints affecting the military in foreign HAOs deal with U.S. fiscal law. These include Chapter 20 of Title 10 of the U.S. code governing Humanitarian and Civic Assistance Activities (HCA), the Foreign Assistance Act, and Department of Defense regulations. All of these laws and regulations affect which activities the U.S. military may engage in during HAOs.

In both foreign and domestic operations, the military must have proper funding authority to act. This means that the laws and the force's desire to help the local population may conflict at times. For example, during Restore Hope, well-meaning dentists and doctors provided care to local civilians despite memos and briefings by the Surgeon General (who was assisted by the SJA), warning that such activities were restricted under Title 10. To avoid potential legal problems and embarrassment, the SJA and the commander should work together during the planning phase to determine possible sources of funding.

## HAO-unique legal requirements

CNA

- ◆ Developing policy and procedures for
  - Investigations, crimes, and prosecutions
  - Civilian detainees
  - Deceased civilians
  - Weapons
- ◆ Establishing air and port authorities
- ◆ Developing plans to train police
- ◆ Developing a plan to transition to the UN

The final category of legal requirements deals with requirements that are unique to HAOs. Most of these requirements occur during missions in which the receiving country has little or no functioning government.

If no functioning judicial system is in place, the force may have to develop its own procedures to address crimes committed by civilians. One problem faced during Restore Hope was that a shortage of detention facilities limited the number of people who could be detained. Because of this problem, the military detained only those who had committed a serious crime or had threatened the force, or those people the force was protecting. Eventually, because no adequate Somali facilities were available, a military facility was established at U.S. Support Command Headquarters. Another unique problem the military faced was the need to determine the legal basis for detaining or prosecuting Somalis in U.S. custody.

Several problems are associated with developing guidance and procedures for detaining civilians. First, because HAO operations are generally not considered "armed conflicts," the 1949 Geneva Conventions do not apply; thus, new standards and procedures must be established for handling detainees. Second, if no government is available to accept the detainees, the military must decide where to keep them. Third, the military must decide how long they should be held. The SJA should be aware of these issues and provide guidance to the commander.



## HAO-unique legal requirements

CNA

- ◆ Developing policy and procedures for
  - Investigations, crimes, and prosecutions
  - Civilian detainees
  - Deceased civilians
  - Weapons
- ◆ Establishing air and port authorities
- ◆ Developing a plan to transition to the UN
- ◆ Developing plans to train police

In operations where the receiving country has no mortuary infrastructure, the military may need to arrange for disposal of the remains of deceased local civilians. The SJA should be prepared to provide guidance and to help develop procedures in this area. One approach used during Restore Hope was for the SJA and the Command's mortuary affairs officer to negotiate an agreement with a local hospital to accept these remains.

In HAOs with a high level of violence and no local authorities to prevent it, the military may be called on to try to lessen the violence by eliminating the local population's weapons. The SJA can help by investigating the implications of programs to pay for weapons, provide food for weapons, or use any other incentives necessary to eliminate weapons in the hands of civilians.

The SJA should be ready to provide clear written guidance early in an operation in case the decision is made to disarm the civilian population. This guidance should include the type of weapons to be confiscated; the personnel who are permitted to retain weapons; and the search procedures to be used. When a disarmament policy was implemented during Restore Hope, two problems that arose were determining which NGOs were permitted to have armed security guards, and implementing a uniform search procedure.

## HAO-unique legal requirements (continued)

CNA

- ◆ Developing policy and procedures for
  - Investigations, crimes, and prosecutions
  - Civilian detainees
  - Deceased civilians
  - Weapons
- ◆ Establishing air and port authorities
- ◆ Developing a plan to transition to the UN
- ◆ Developing plans to train police

Another example of a unique HAO legal requirement in the absence of a functioning government relates to airspace and port-authority control. Without a government to enforce procedures, the military may have to establish temporary control over airspace and local port facilities. During Restore Hope, the Unified Task Force (UNITAF) assumed control over Somali airspace and the port facilities in both Mogadishu and Kismayo to facilitate the transport of relief supplies into the country. These actions were justified by UN Security Council Resolution 794, which stated that the forces could use “all necessary means” to secure the delivery of relief supplies. UNITAF later worked with international organizations, such as the International Civil Aviation Organization (ICAO) and the United Nations Department of Peacekeeping (UNDP), to help restore civilian administration of the airspace and port facilities.

Finally, the SJA should help plan for transition of an operation from the U.S. military to the UN or another organization’s control. During Restore Hope, UNITAF assisted in the transition to UN control by developing transition plans for three areas vital to rehabilitation: (1) the justice system, (2) the port, and (3) the airspace.

## HAO-unique legal requirements (continued)

CNA

- ◆ Developing policy and procedures for:
  - Investigations, crimes, and prosecutions
  - Civilian detainees
  - Deceased civilians
  - Weapons
- ◆ Establishing air and port authorities
- ◆ Developing a plan to transition to the UN
- ◆ Developing plans to train police

Transition may require reestablishing a local police force. However, U.S. law (Title 10 and Title 31) prohibits using military funds for establishing, equipping, training, or funding police forces, except in certain countries. The SJA should therefore be prepared to help develop plans and identify alternative sources of funding for the military. During Restore Hope, the UNTAF SJA and the provost marshal were able to work with the United Nations to develop a plan that was ultimately funded by sources from the State Department and the UN, and was implemented by the UN. One alternative to having the military train police directly would be to identify retired police officers who might act as consultants.

## HAO-unique legal requirements (continued)

CNA

### Relief camp legal requirements

- Sovereignty issues
- Status issues
  - » Determine the status of children born in camps
  - » Determine the status of items made by refugees
- Medical issues
- Developing camp regulations and procedures
- Fiscal and contract issues

Many HAO-unique legal requirements are related to the operation of relief camps for civilians. Requirements can vary depending on the location of the relief camp and the type of HAO. Operation GTMO, for example, took place on a U.S. naval base in a foreign country, whereas Operation Provide Comfort took place in Turkey and Iraq.

During GTMO, in addition to concerns about whether such an operation was allowed under the U.S.-Cuban Treaty of Lease, legal requirements included determining the status of children born in the camps (children retained Haitian citizenship); determining the status of items made by refugees with U.S. supplies; determining medical liability for the treatment of refugees; and developing camp regulations and procedures that would suit the culture of the Haitian population.

During Provide Comfort, legal requirements dealt mostly with contracting issues such as obtaining land for camps. Fiscal issues were also a concern because money had to be located to fund construction of the relief camps. The ability to resolve funding issues early on is especially important to ensure proper reimbursement of funds to the military. Because Provide Comfort was not an armed conflict, ad hoc procedures and regulations for handling the refugees had to be developed.

## Recommendation

CNA

The best approach to meet these requirements is to develop doctrine along with programs for training and education.

The most important HAO legal requirement is that the SJA be prepared to provide the commander with guidance on important legal issues and to assist him in developing plans, policies, and procedures. This also requires that the SJA and the commander be aware of the need to work together. The Marine Corps can facilitate both of these aims by developing doctrine, including SOPs and manuals, and developing programs for training and education.

## Recommendations

CNA

### Doctrine

- Incorporate lessons learned and HAO-specific guidance into handbooks and manuals for SJAs and commanders.
- Develop SOPs or frameworks to guide SJAs and commanders.

Although it is impossible to create a comprehensive plan for all HAO contingencies, it is possible to provide general guidance by incorporating past lessons learned into handbooks and manuals for SJAs and commanders. These handbooks should also emphasize the need for the commander and SJA to work together. Some work in the area of handbooks has already been done. The Joint Warfighting Center recently completed a *Joint Task Force Commander's Handbook*, and other efforts are continuing within the Marine Corps and in other organizations.

Another way the Marine Corps can prepare for HAOs is to develop Standard Operating Procedures (SOPs) or checklists. Checklists should be developed that the commander and SJA can use during the predeployment and employment phases of a mission. Most of the requirements discussed in this study can be met by using such SOPs or checklists.

## Recommendations (continued)

CNA

### Doctrine

- Incorporate lessons learned and HAO-specific guidance into handbooks and manuals for SJAs and commanders.
- Develop SOPs or frameworks to guide SJAs and commanders.

During Emerald Express '95, an attempt was made to develop a planning guide that could be used by commanders as a framework for working with coalitions during HAOs. A draft outline of this guide is provided in appendix B. The guide includes a series of relevant questions under general headings for the commander to consider. Headings include command relationships, ROE, SOFAs, accountability within the coalition, claims, mutual support, obligations and constraints, relationship with the host-nation inhabitants, information sharing, relations with nongovernmental organizations (NGOs) and private volunteer organizations (PVOs), media relations, local security forces, and fiscal authority for U.S. humanitarian civic assistance. Most of the legal requirements identified in this study (appendix A) fall under one of these headings. Combining the requirements in this report with the coalition framework in appendix B would be a good start to a legal checklist. In addition, a transition section could be included to help plan and highlight possible alternatives.

## Recommendations (continued)

CNA

### Training and education

- Include sessions on HAO-specific guidance and lessons learned in PME courses for SJAs.
- Hold predeployment briefings for commanders on potential legal issues.

Another way to meet the requirements described in this briefing is to incorporate HAO-specific guidance and lessons learned into Marine Corps training and education. Professional Military Education (PME) courses for SJAs could include material on HAO legal requirements and issues. Commanders, on the other hand, could receive predeployment briefings on potential legal issues and problems.



## **Appendix A**

This appendix presents a list of the legal requirements for humanitarian assistance operations identified in our study. The requirements are arranged according to two mission phases: predeployment and deployment.

LEGAL REQUIREMENTS			
Predeployment			
Planning			
	Personnel		
		Establish SJA cell.	
		Task organize legal support.	
		Bring strong, experienced SJA (with leadership and managerial expertise).	
		Bring attorneys with expertise in the following:	
		Disaster relief	
		International law	
		Contracting	
		Fiscal law	
		Administrative and operational law	
		Designate liaison for the following:	
		International Committee of the Red Cross (ICRC)	
		Humanitarian Operations Center or Civil-Military Operations Center	
		Customs	
		Police	
		Bring attorneys to review PSYOPs materials and other documents.	
		In a JTF, make sure that service with largest component has a representative.	
	Equipment and supplies		
		Bring word processing and reproduction equipment.	
		Bring on-line search service.	
		Bring hardware, such as satellite telephone, necessary for on-line search.	
		Bring storage containers for documents.	
		Obtain transportation support.	
	Legal assistance		
		Organize a legal-assistance team.	
		Provide legal assistance to deploying forces (wills, powers of attorney etc.).	
	Documentation		
		Bring basic set of legal documents.	
		Bring basic legal forms (release forms, hold harmless forms. etc.).	
	ROE		
		Seek approval and modifications, if necessary.	
		Prepare in advance.	
		Assist G-3 with dissemination to all personnel.	
		Prepare separate package for coalition forces.	
		Assist in training.	
		Provide guidance on extent to which other rules apply.	
		Ensure clear and consistent terminology.	

	Knowledge of applicable law and terminology	
	International law (including environmental law)	
	Legal justification	
	Refugee camps	
	Treaty law	
	Host-country law	
	Domestic (U.S. law)	
	DOD-FEMA interface	
	Posse comitatus	
	Elections	
	Volunteers	
	Radio station	
	Immigration law	
	General Orders	
	Promulgate	
	Explain	
	Disseminate	
	Commander's policy guidance	
	Identify key issues and problem areas.	
	Promulgate guidance accordingly.	
	Educate and disseminate.	
	Foreign claims authority	
	Coordinate with the single service claims authority (Air Force in Somalia).	
	Identify claims officer.	
	Security guards	
	Provide for security of compound.	
C2		
	General courts-martial authority	
	Work out courts-martial authority for rear and forward elements.	
	Establish uniform policies for Joint Command general courts-martial authority.	
	Coordinate as necessary via the command.	
	Ensure that OICs have authority to conduct NJP (Non-judicial punishment).	
	Provide guidance on status of foreign forces in United States.	
	Communications	
	Hold daily briefings to ensure that policy and decisions remain consistent.	
	Classified material	
	Establish classified material control point.	
	SOFA	
	Establish a Status of Forces Agreement (SOFA).	
	MOA	
	Establish Memorandum of Agreement with government agencies.	
	Clearances	

		Coordinate with State Department (for overflight clearances).
	Jurisdiction	
		Assist G/J-3 in determining what police boundaries are and conform to them.
<b>Deployment</b>		
<b>Planning/C2</b>		
	Agreements	
		Write hold-harmless agreements.
		Address non-U.S. military passenger issues.
		Interface with and transition to UN operations.
		Assist in identifying conditions for transition.
<b>Once on ground</b>		
	Weapons Incentive Program	
		Investigate before implementation.
	Use of public buildings	
		Encourage use of public buildings.
<b>Mobility and survivability</b>		
	ROE	
		Help to disseminate in advance (especially for mobs, rioters etc.).
	Riot-control agents (RCAs)	
		Submit request.
		Authorize procedures.
		Disseminate to subordinate commanders.
	Weapons confiscation	
		Develop clear written guidance early.
<b>Operations</b>		
	Humanitarian and civic assistance programs.	
		Disseminate restrictions.
		Write cross-servicing agreements.
	Logistics and medical support to non-U.S. personnel.	
		Write cross-servicing agreements before arrival of coalition forces.
		Develop a plan to provide support.
		Provide guidance (e.g., signatory authority for reimbursement).
	Contracting	
		Ensure flexible contracting structure.
		Keep oversight in theatre.
	Claims procedures and investigations.	
		Develop and distribute vehicle accident reporting forms to drivers.
		Distribute claims verification cards.
		Appoint agents.
	Mortuary affairs	
		Establish contact with the Command Mortuary Affairs officer.
		Help develop procedures for burial of local civilians.

	Civilian detainees
	Develop guidance and procedures.
	Investigations, crimes, and prosecution
	Write guidance and procedures for crimes committed by civilians
	under military control (after consulting higher authority).
	Write guidance for crimes committed by JTF personnel.
	Training of ASF
	Coordinate and develop plan to be funded by other agencies.
	Airspace control
	Designate SJA and action officer to coordinate with other agencies.
	Establish civilian airport authority.
	Port authority control
	Establish civilian port authority.
	Make sure the Unified Task Force is reimbursed.
	Fiscal Law
	Provide continued guidance for use of O & M funds.
	Provide guidance for section 506, FAA.
	Personnel
	Help determine liberty policy.
	Customs
	Disseminate any changes in procedures to affected organizations.
	Property
	Determine ownership of property (for example, artwork by Haitians).
	Status of refugees
	Determine status of children born into camps.
	Medical
	Determine legal liability.
	Provide guidance on what to provide.
	Camp regulations and security procedures
	Tailor regulations and procedures to suit camp population.
	Be sensitive to culture of population.

## **Appendix B**

This appendix provides the results of the legal aspects working group at Emerald Express '95. It gives a framework that can be used by operational commanders when dealing with coalitions.

## **Emerald Express '95 – Legal Aspects Group Coalition Framework**

- 1. Command relationships**
- 2. Rules of engagement**
- 3. Status of U.S. and coalition forces in host nation**
- 4. Accountability within the coalition**
- 5. Claims**
- 6. Mutual support—Obligations and constraints**
- 7. Relationship with host-nation inhabitants**
- 8. Information sharing**
- 9. NGO and PVO relations**
- 10. Media relations**
- 11. Local security forces**
- 12. Fiscal authority for U.S. humanitarian and civic assistance**

## **Emerald Express '95 – Legal Aspects Group**

### **Objective**

To develop a basic framework for coalition forces to address legal aspects of operational issues arising in coalition operations. The framework is designed to be used as a guide for commanders and staff in planning Operations Other Than War (OOTW).

### **Preamble**

At the outset, determine the legal basis for the mission. Is it authorized under Chapter 6 or Chapter 7 of the UN Charter or a regional security arrangement? Always consider the *mission, end state, and commander's intent* for each component of the framework. The framework outlined here does not create binding legal obligations between nations, but should form the basis for discussion and possible agreement.

### **Coalition framework**

#### **1. Command relationships**

Are the command relationships between coalition partners clearly defined, effective, and acceptable?

#### **2. Rules of engagement**

- Do the ROE provide for collective self-defense?
- What is the status of training in ROE for coalition forces? What coordination is necessary between coalition members to ensure consistency?
- Are the unclassified JCS standing ROE adequate to respond to the threat? What, if any, supplemental measures are necessary for mission accomplishment?
- Should any force, or armed individuals be declared hostile, and if so, how can authority for this declaration be obtained?
- Is there authority for employment of riot-control agents?



- Are there provisions for less-than-lethal means? Do they provide maximum flexibility?

### **3. Status of U.S. and coalition forces in host nation**

- Is there a SOFA in place to cover U.S. or coalition forces? If so, what are the terms?
- If no SOFA, do we need one? Consider the interagency approval procedures.
- Are there provisions for criminal jurisdiction? (We should seek to maximize U.S./coalition jurisdiction.)
- Are there provisions for civilians accompanying the force?

### **4. Accountability within the coalition**

- Must each coalition force discipline its own members? Must the coalition force commander inform the Task Force Commander of any action taken?
- How should serious incidents be reported and investigations be conducted?

### **5. Claims**

- What is the responsibility of the United States under the Foreign Claims Act?
- What is the responsibility of coalition forces to pay for their own claims?
- Can we recognize a waiver of claims between coalition countries?
- What is the UN's responsibility for claims?

### **6. Mutual support—obligations and constraints**

- What is the requirement for mutual support?
- What is the responsibility of each nation to support other nations in the following areas: medical, logistics, maintenance, and other combat service support activities?

- Is there a mechanism for delivery and/or reimbursement for support?

#### **7. Relationship with host-nation inhabitants**

- Is there an existing government structure? If so, is it effective? (Consider host-nation law.)
- What is the policy of the Task Force concerning detention of civilians? What are the conditions of detention? What is the standard of care and when does it terminate?
- What is the authority of coalition forces over local inhabitants, (e.g., regarding riots, crimes, curfews)?
- What policy will be developed for weapons confiscation? Will the policy permit local inhabitants to keep weapons for self-defense?

#### **8. Information sharing**

- What is the policy on the transfer and sharing of information?
- What limitations are placed on the dissemination of classified information between coalition forces?

#### **9. NGO and PVO relations**

- What are the relationships between the coalition forces and local NGOs and PVOs?
- What structure or organizations will be created to handle relations?

#### **10. Media relations**

- How can a consistent declaration of Combined Task Force (CTF) Policies be developed?
- What is the relationship between the media personnel of coalition countries and the CTF?

**11. Local security forces**

- What existing local security forces are in place? Are they effective? (Consider factional and/or political alliances. Consider host-nation law.)
- How can local forces assist in mission accomplishment and force security?
- What, if any, assistance should be provided to the security force?
- What is the source of authority and funding for assistance to the security force?

**12. Fiscal authority for humanitarian and civic assistance**

- Can we anticipate and identify fiscal authority and limitations as early as possible?
- Do we have mission-specific appropriated funds? Is it disaster relief? (Presidential designation)
- Are the proposed expenditures reasonably related to the purposes for which the appropriation was made?
- Are there alternative sources of funding (CINC initiative funds, etc.)?
- Are section 401 funds available? Does the activity meet the requirements of the law? Is the activity connected with a military operation? Are there justifications for the activities in addition to training?

Note: This framework is designed to raise legal issues during the planning process for proposed humanitarian operations.

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